

So Ordered.

Dated: March 3rd, 2020



Frederick P. Corbit

Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:)
COUNTRY MORNING FARMS, INC. and) Lead Case No. 19-00478-FPC11
COUNTRY MORNING FARMS CATTLE,) Jointly Administered
LLC,)
Debtors/Debtors in Possession.) FINDINGS OF FACT AND CONCLUSIONS
OF LAW REGARDING CONFIRMATION OF
DEBTORS' SECOND AMENDED PLAN OF
REORGANIZATION

THIS MATTER come on for hearing on January 16, 2020 for confirmation of Debtors proposed 2nd Amended Plan of Reorganization (the "Plan") (ECF #405). William L. Hames and John W. O'Leary appearing for Debtors; Deborah Crabbe appearing for creditor Bank of the West; David Eash appearing for creditor EPL Feed, LLC; and James Perkins appearing for the US Trustee. The court continued the hearing to January 23, 2020, by telephone conference. At that hearing, the court again continued to February 4, 2020 to allow Bank of the West and Debtors to propose amendments to the Second Amended Plan, which hearing was reconvened on February 5, 2020. Mr. Eash appeared at the hearing on January 16 but did not participate in further hearings.

The court having considered the memorandums filed by counsel, the Declaration of Michael Zeponi, the Declaration of Neal Gluckman, the Declaration of Deborah Crabbe and having heard the testimony of Kevin Gilbert, CEO of Debtors, and Lucas Kartic, Debtors'

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HAMES, ANDERSON, WHITLOW & O'LEARY, P.S.
601 W. KENNEWICK AVENUE
P.O. BOX 5498
KENNEWICK, WA 99336-0498
(509) 586-7797 / Fax (509) 586-3674

1 financial adviser and, having considered the arguments of Counsel and the subsequent pleadings
2 filed by counsel, makes the following Findings of Fact and Conclusion of Law:

3 FINDINGS OF FACT

4 1. Debtors in possession, Country Morning Farms, Inc (“CMF”) and Country
5 Morning Farms Cattle, LLC, (“CMFC”) collectively referred to as “Debtors” filed Chapter 11
6 proceedings on March 1, 2019. Debtors filed their Second Amended Disclosure Statement and
7 Second Amended Plan of Reorganization on December 4, 2019. The order approving the Second
8 Amended Disclosure Statement and Setting Confirmation was entered by the above entitled
9 Court on December 5, 2019.

10 2. Debtors gave proper notice of their Second Amended Disclosure Statement,
11 Second Amended Plan of Reorganization, List of Classifying Claims and Interest, Ballot. and
12 notice of the Hearing on Confirmation of the Plan to all creditors and parties in interest as
13 required by FRBP 2002, LBR 2002-1, and LBR 3018-1, as well as other applicable provisions of
14 the bankruptcy code and the Federal Rules of Bankruptcy Procedure. Proof of service of such
15 notice was filed with the court (ECF #509). The date of the Confirmation Hearing was continued
16 for two days. An Amended Notice of Confirmation Hearing was served on all required parties on
17 December 19, 2019 (ECF #515).

18 3. The following classes of claims are impaired under the plan:

19 Class 2 allowed secured claims of the Port District of Grant County

20 Class 3 allowed secured claim of Bank of the West

21 Class 4 allowed secured claim of Adams County

22 Class 5 allowed secured claim of the Grant County Treasurer

23 Class 6 allowed secured claim of CNH Industrial Capital

24 Class 9 allowed secured claims Kent Farms, Inc/Brad and LaRee Kent

25 Class 10 allowed secured claim of Sterns National Bank

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601 W. KENNEWICK AVENUE
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1 Class 11 allowed secured claim of CHS, Inc d/b/a Sun Basin Growers

2 Class 12 allowed secured claim of Diversified Financial

3 Class 13 allowed secured claim of US Small Business Administration

4 Class 14 allowed secured claim of Wells Fargo Equipment Finance

5 Class 17 allowed secured claim of Stahl Hutterian Brethren/ Stahl Farms

6 Class 18 allowed secured claim of All West Select Sires

7 Class 20 allowed secured claim of First Foundation Bank/ Best Main, Inc

8 4. Debtors properly filed a Report of Balloting and Ballot Summary. The Report of
9 Balloting and Ballot Summary indicate that both Class 1 priority claims voted for the Plan, Class
10 2 impaired creditor voted for the Plan, Class 3 impaired creditor of Bank of the West voted
11 against the Plan as well as objecting to the Plan, Class 10 impaired creditor voted for the Plan,
12 Class 15 unimpaired creditor voted for the Plan, Class 22 impaired unsecured creditors cast six
13 ballots, with five approving the Plan, which 5 comprise more than half in number and more than
14 2/3s of the amount of claims voting required for the class to accept the Plan, therefore; Class 22
15 accepts the Plan.

16 5. At the February 5th hearing the Court approved amendments to the Second
17 amended plan and required notice of the amendments to the second amended plan be given to
18 creditors to permit creditors to change their vote. The Court shortened notice period of the Plan
19 amendments to 14 days. Debtors mailed a Notice of Plan Amendment and Opportunity to Revise
20 Ballot and notice of hearing, to all creditors on February 10, 2020. Debtors received 1 ballot
21 from CHS, Inc., dba Sun Basin, Class 11, who did not vote in the initial balloting. The CHS
22 ballot accepts the Plan. The final hearing on confirmation was held on February 26, 2020, by
23 telephone conference hearing. The second amended plan with the amendments approved at the
24 February 5th hearing comprise the debtor's plan of reorganization and are hereafter collectively
25 referred to as the "Plan".

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1 6. No ballots other than those identified in the Report of Balloting, and the ballot
2 received in the second round of voting from CHS have been received by Debtors.

3 7. The Plan has been accepted in writing by at least one non-insider class of
4 impaired creditors as required by 11 U.S.C. § 1129(a)(10), The provisions of Chapter 11, Title
5 11 of the United States Code as well as other applicable law.

6 8. The Plan treatment of the U.S. Small Business Administration, Class 13, as set
7 forth in Debtors' Second Amended Plan is stricken and replaced with the following paragraph:

8 “The Small Business Administration has a security interest in equipment and real
9 estate commonly known as 225 North Country Rd. Warden WA (along with the rents
10 therefrom) that is owned by Debtors and a secured claim in the amount of \$306,337.82.
11 It is anticipated adequate protection payments will be made to the SBA in the amount of
12 \$5,221.00 prior to the Effective Date.

13 “Hereafter, monthly payments for this loan shall be calculated based on a 219-
14 month amortization at 3.0% interest. Monthly payments of principle and interest will be
15 made in the amount of \$1,819.49. A balloon payment constituting the then remaining
16 principal and accrued interest shall be due the 120th month following the Effective Date.

17 “In addition to the remedies set forth in Article VIII of the Amendments to the
18 Second Amended Plan, in the event of default to the SBA pursuant to Article VIII of the
19 Plan, the interest rate on the balance of the SBA obligation at time of default shall revert
20 to 5.19%.”

21 9. Debtors disclosed the identity of family members and individuals who are officers
22 or directors of CMF or CMFC and the continuance of those individuals in management
23 positions. Debtors also disclosed the identity of insiders and their compensation.

24 10. New management in the person of Gale Noyes assumed the CEO position
25 approximately 17 months prior to filing. One month after filing, Kevin Gilbert became CEO of

1 the company. New management changed the policies and procedures of the company to ensure
2 that management is more effectively working together toward common goals.

3 11. There is no governmental regulatory agency that controls Debtors rates and no
4 approval from governmental regulatory agency is needed to set CMF or CMFC rates.

5 12. No 1111(b)(2) Claims have been made any secured creditor.

6 13. Debtors filed the above-captioned Chapter 11 proceedings on a voluntary basis.
7 Therefore, no fees are due to any involuntary creditors. Both CMF and CMFC are entities; CMF
8 is a corporation and CMFC is a limited liability company. Neither company owes child support
9 or domestic support obligations. Neither company has unpaid wage claims nor claims for
10 commissions. Neither company has any claims for non-payment to any employee benefit plan.
11 Neither company operates a grain storage facility. Neither company owes a debt to fishermen.
12 There are no claims made by any creditors for pre-petition deposits for purchase or lease of
13 products for any creditor's personal family or household use. Neither debtor, CMF nor CMFC,
14 owes the bankruptcy court for any fees. Debtors are not paying retiree benefits; therefore, no
15 retiree benefits will be affected by the Plan. As to 11 U.S.C. § 1129(a)(15), neither CMF nor
16 CMFC is an individual. Therefore, 11 U.S.C. §1129(a)(15) is inapplicable.

17 14. The Court finds the Plan has been proposed in good faith and not by any means
18 forbidden by law. All payments made or promised by Debtors under the Plan for services, or for
19 cost and expenses incident to the case, have been fully disclosed to the Court and are reasonable
20 and have been approved, or if they are to be fixed after confirmation of the Plan, will be subject
21 to approval by the court. Prior to filing Debtors' bankruptcy petitions, Country Morning Farms,
22 Inc. was owned 100% by Robert and Gerry Gilbert, Country Morning Farms Cattle, LLC is also
23 100% owned by Robert and Gerry Gilbert. The ownership will not be changed after
24 confirmation. After confirmation the reorganized Debtors intend to continue employing insiders
25 as described on page 6 and page 7 of the Second Amended Disclosure Statement.

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601 W. KENNEWICK AVENUE
P.O. BOX 5498
KENNEWICK, WA 99336-0498
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1 15. Each holder of a claim or interest has accepted the Plan or will receive or retain
2 under the Plan property of a value, as of the effective date of the Plan, that is not less than the
3 amount that such hold would receive or retain if Debtors were liquidated under Chapter 7 of the
4 Bankruptcy Code on such date.

5 16. With respect to creditors who did not vote and Bank of the West, the Debtors'
6 Second Amended Plan of Reorganization as amended does not discriminate unfairly and is fair
7 and equitable with respect to Bank of the West and each class of claims or interests that is
8 impaired and has not accepted the Plan.

9 17. Debtors' profitability through September 2019, was up 54% over the same period
10 in 2018, as measured by earnings before interest, taxes, depreciation and amortization
11 (EBITDA).

12 18. The dairy herd health is good. There is no present need for Debtors to purchase
13 additional heifers because their heifer replacement program is sufficient to maintain herd size.
14 The size of the milking dairy herd should remain relatively constant and Bank of the West's
15 collateral in the dairy herd should not decrease because cows are replaced upon their deaths.

16 19. Bank of the West is an over-secured creditor.

17 20. Confirmation of the Plan is not likely to be followed by liquidation, or the need
18 for further financial reorganization of Debtors.

19 21. All creditors were given notice of the confirmation hearing. One objection was
20 filed by Bank of the West, which objection is hereby overruled.

21 22. Salaries for all insiders were disclosed at ECF 48.

22 23. Debtors' Second Amended Plan, as amended, can be confirmed.

23 CONCLUSIONS OF LAW

24 The court having previously entered its Findings of Fact at ECF #586, and based upon
25 the additional Findings of Fact herein, the pleadings and records of this case, the testimony and

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601 W. KENNEWICK AVENUE
P.O. BOX 5498
KENNEWICK, WA 99336-0498
(509) 586-7797 / Fax (509) 586-3674

1 other evidence provided at the confirmation hearing, the Court makes the following Conclusions
2 of Law:

3 1. The requirements for confirmation of the Plan imposed by the Bankruptcy Code,
4 Federal Rules of Bankruptcy Procedure and other applicable law, including the requirements of
5 11 U.S.C. § 1129, have been met.

6 2. The plan treatment of the US Small Business Administration should be amended
7 as described in the above Findings of Fact.

8 3. To the extent the above-entered Findings of Fact are in fact Conclusions of Law,
9 such findings are hereby incorporated into these Conclusions of Law and should be denominated
10 as such.

11 4. The provisions of Chapter 11 have been complied with, and the Plan has been
12 proposed in good faith and not by any means forbidden by law.

13 5. Any and all payments for professional services, including authorization required
14 by 11 U.S.C. § 327 and 330, shall remain subject to bankruptcy Court approval notwithstanding
15 confirmation of the Plan.

16 6. The salaries and consulting fees paid to the insiders disclosed by the Debtors
17 comply with the requirements of 11 U.S.C. § 1129(a)(5).

18 7. No government regulatory commission or agency is required to approve the Plan
19 or terms of the Plan.

20 8. Debtors' Plan satisfies the requirements of 11 U.S.C. § 1129(a)(7) in that each
21 impaired class that has not accepted the Plan will receive value as of the effective date of the
22 Plan, that is not less than the amount of such claim it would receive if Debtors were liquidated
23 under Chapter 7 of the Bankruptcy Code.

24 9. The impaired classes entitled to vote on the Plan who have not accepted the Plan
25 are the non-voting classes. Debtors' Second Amended Plan of Reorganization, as amended, does

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601 W. KENNEWICK AVENUE
P.O. BOX 5498
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1 not discriminate unfairly and is fair and equitable with respect to the impaired non-voting classes
2 and objecting creditor Bank of the West. As a result, the Plan can be confirmed notwithstanding
3 the provisions of 11 U.S.C. § 1129(A)(8).

4 10. Administrative priority claims described by 11 U.S.C. § 503(b) and 11 U.S.C. §
5 507(A)(2) are provided for as required by 11 U.S.C. § 1129(A)(9). At least one impaired class
6 has accepted the Plan and, therefore, the Plan meets the requirements of 11 U.S.C. §
7 1129(A)(10).

8 11. Confirmation of the Plan is not likely to be followed by liquidation or the need for
9 further financial reorganization of Debtors.

10 12. The effective date of the Plan will be the first business day following the date on
11 which the confirmation becomes a final non-appealable order. Debtors are authorized and
12 directed to begin substantial consummation of the Plan on the effective date,

13 13. Each holder of a claim or interest that has accepted the Plan the non-voting
14 classes, and Bank of the West, shall retain the liens securing their respective claims and will
15 receive deferred cash payments totaling at least the amount of such claim of a value, as of the
16 effective date of the Plan, of at least the value of the holder's interest in the estate's interest in
17 the property. If there is any sale of a secured lender's property, the secured lender's lien shall
18 attach to the sale proceeds and such proceeds shall be delivered to secured lender at closing of
19 any sale unless otherwise agreed to in writing by the secured lender.

20 14. The identity of any insider that will be employed or retained by Debtors and their
21 compensation has been fully disclosed at ECF 48.

22 15. The amendments to Debtors' Second Amended Plan of Reorganization (ECF 592)
23 were served on all parties pursuant to the applicable provisions of Title 11 and all applicable
24 bankruptcy rules and are hereby incorporated into the Debtor's Second Amended Plan of
25 Reorganization.

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HAMES, ANDERSON, WHITLOW & O'LEARY, P.S.
601 W. KENNEWICK AVENUE
P.O. BOX 5498
KENNEWICK, WA 99336-0498
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1 16. All payments made or promised by Debtors to any other person or entity for
2 services rendered or for reimbursement of costs and expenses incurred in connection with the
3 Plan or incident to this case, have been fully disclosed to the Court, are reasonable and are
4 hereby approved; but if such services, costs or expenses arise after confirmation of the Plan, such
5 payments will be subject to approval of the court.

6 18. The Debtors' Plan can be confirmed.

7 DATED THIS 3rd day of March of 2020.

8 Presented by:

9 HAMES, ANDERSON, WHITLOW & O'LEARY, P.S.
10 Attorneys for Debtors

11 BY: /s/ William L. Hames
12 WILLIAM L. HAMES, WSBA #12193
 JOHN W. O'LEARY, WSBA #33004

13 Agreed as to form:

14 FOSTER GARVEY, P.C.
15 Attorneys for Creditor Bank of the West

16 BY: /s/ Deborah A. Crabbe (w/permission)
 DEBORAH A. CRABBE, WSBA #22263

17 FELTMAN EWING, P.S.
18 Attorneys for EPL Feed, LLC

19 BY: /s/ David E. Eash (w/permission)
 DAVID E. EASH, WSBA #6684

20 OFFICE OF THE UNITED STATES TRUSTEE

21 BY: /s/ James Perkins (w/permission)
22 JAMES PERKINS, WSBA #12996

23 OFFICE OF THE UNITED STATES ATTORNEY
24 For the U.S. Small Business Administration

25 BY: /s/ Brian M. Donovan (w/permission)
 BRIAN M. DONOVAN, WSBA #41121
 Assistant United States Attorney